

The Honorable Robert H. Whaley

Scott M. Ellerby
Mills Meyers Swartling
1000 Second Avenue, 30th Floor
Seattle, WA 98104-1064
(206) 382-1000
WSBA No. 16277
E-mail: sellerby@mms-seattle.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAMIN R. BARTON,

Plaintiff.

VS.

NCO FINANCIAL SYSTEMS, INC.

Defendant

NO. CV-08-306-RHW

**ANSWER OF NCO FINANCIAL
SYSTEMS, INC. TO
COMPLAINT**

Defendant, NCO Financial Systems, Inc. (hereinafter “NCO”), for itself alone, responds to the complaint filed by plaintiff, Benjamin F. Barton (“Plaintiff”), as follows:

I. STATEMENT OF CASE

NCO denies the allegations contained in the Statement of the Case.

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(NO. CV-08-306-RHW)**

LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1644
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

II. PARTIES

2.1 NCO lacks sufficient information to answer the allegations contained in ¶ 2.1, and based thereon denies the same.

2.2 NCO admits Capital One placed an account owed by Plaintiff with NCO for collection. Except as expressly admitted, NCO denies the remaining allegations contained in ¶ 2.2 for lack of sufficient information.

2.3 NCO lacks sufficient information to answer the allegations contained in ¶ 2.3 and based thereon denies the same

2.4 NCO admits the allegations of ¶ 2.4.

2.5 NCO admits that it engages in debt collection nationwide. Except as specifically admitted, NCO denies the remaining allegations contained in ¶ 2.5 of the Complaint.

2.6 NCO admits that it regularly attempts to collect consumer and commercial debt. Except as specifically admitted, NCO denies the remaining allegations contained in ¶ 2.6 of the Complaint.

2.7 NCO admits that when it acts as a debt collector as defined by
15 U.S.C. § 1692a(6) with respect to an account its conduct may be governed
by the applicable provisions of the FDCPA. Except as specifically admitted,
NCO denies the remaining allegations contained in ¶ 2.7 of the Complaint.

**ANSWER OF NCO FINANCIAL SYSTEMS,
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LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

2.8 NCO admits Capital One placed account number
xxxxxxxxxxxxx8610 with NCO for collection and NCO made collection
attempts thereon. Except as expressly admitted, NCO denies the remaining
allegations contained in ¶ 2.8.

III. JURISDICTION AND VENUE

3.1 NCO admits to the allegations contained in ¶3.1 for jurisdiction and venue purposes only.

VI. FACTS

4.1 NCO admits that when it acts as a debt collector as defined by
15 U.S.C. § 1692a(6) and/or analogous state laws its conduct may be governed
by the applicable provisions of those statutes. Except as specifically admitted,
NCO denies the remaining allegations contained in ¶ 4.1 of the Complaint.

4.2 NCO lacks sufficient information to answer the allegations contained in ¶ 4.2, and based thereon denies the same.

4.3 NCO lacks sufficient information to answer the allegations contained in ¶ 4.3, and based thereon denies the same.

4.4 NCO lacks sufficient information to answer the allegations contained in ¶ 4.4, and based thereon denies the same.

4.5 NCO denies the allegations contained in ¶ 4.5.

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LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

1 4.6 NCO admits its records for the subject account indicate a call was
2 made at approximately 11:57 a.m. on June 30, 2008. However, NCO lacks
3 sufficient information to answer the remaining allegations contained in ¶ 4.6,
4 and based thereon denies the same.
5

6 4.7 NCO admits its records for the subject account indicate a call was
7 made at approximately 2:45 p.m. on June 30, 2008. However, NCO lacks
8 sufficient information to answer the remaining allegations contained in ¶ 4.7,
9 and based thereon denies the same.
10

11 4.8 NCO denies the allegations contained in ¶ 4.8.
12

13 4.9 NCO admits its records for the subject account indicate a call was
14 made at approximately 6:11 p.m. on July 1, 2008. NCO lacks sufficient
15 information to answer the remaining allegations contained in ¶ 4.9, and based
16 thereon denies the same.
17

18 4.10 NCO admits its records for the subject account indicate a call was
19 made at approximately 6:11 p.m. on July 1, 2008. Except as specifically
20 admitted, NCO denies the allegations contained in ¶ 4.10.
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22 4.11 NCO denies the allegations contained in ¶ 4.11.
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24 4.12 NCO admits its records for the subject account indicate a call was
25 made at approximately 5:28 p.m. on July 2, 2008. However, NCO lacks
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LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

sufficient information to answer the remaining allegations contained in ¶ 4.12, and based thereon denies the same.

4.13 NCO lacks sufficient information to answer the allegations contained in ¶ 4.13, and based thereon denies the same.

4.14 NCO lacks sufficient information to answer the allegations contained in ¶ 4.14, and based thereon denies the same.

4.15 NCO lacks sufficient information to answer the allegations contained in ¶ 4.15, and based thereon denies the same.

4.16 NCO admits its records for the subject account indicate it called Plaintiff's home. Except as expressly admitted, NCO denies the remaining allegations in ¶ 4.16.

4.17 NCO denies the allegations contained in ¶ 4.17.

4.18 NCO denies the allegations contained in ¶ 4.18.

4.19 NCO denies the allegations contained in ¶ 4.19.

V. FIRST CAUSE OF ACTION

Washington State Collection Agency Act

5.1 NCO incorporates its responses to ¶¶ 1 through 4.19 as though fully set forth herein.

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LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

5.2 In response to ¶ 5.2 of the Complaint NCO avers the cited statute speaks for itself and refers all matters of law to the court.

5.3 NCO denies the allegations contained in ¶ 5.3 of the Complaint.

5.4 NCO denies the allegations contained in ¶ 5.4 of the Complaint.

5.5 NCO denies the allegations contained in ¶ 5.5 of the Complaint.

5.6 NCO denies the allegations contained in ¶ 5.6 of the Complaint.

5.7 NCO denies the allegations contained in ¶ 5.7 of the Complaint.

VI. SECOND CAUSE OF ACTION

Fair Debt Collection Practices Act Violations

(Application of Statute)

6.1 NCO incorporates its responses to ¶¶ 1 through 5.7 as though fully set forth herein.

6.2 In response to ¶ 6.2 of the complaint NCO avers the cited statute speaks for itself and refers all matters of law to the court.

6.3 In response to ¶ 6.3 of the complaint NCO avers the cited statute speaks for itself and refers all matters of law to the court

6.4 In response to ¶ 6.4 of the complaint NCO avers the cited statute speaks for itself and refers all matters of law to the court

**ANSWER OF NCO FINANCIAL SYSTEMS,
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LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 736-7342

1 6.5 NCO avers the cited statute speaks for itself and refers all matters
 2 of law to the court. NCO admits that when it acts as a debt collector as defined
 3 by 15 U.S.C. § 1692a(6) its conduct may be governed by the applicable
 4 provisions of the FDCPA. NCO lacks sufficient information to answer the
 5 remaining allegations contained in ¶ 6.5 of the complaint, and based thereon
 6 denies the same.

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8 VII. THIRD CAUSE OF ACTION

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11 Fair Debt Collection Practices Act Violation

12 (Harassment)

13 7.1 NCO incorporates its responses to ¶¶ 1 through 6.5 as though fully
 set forth herein.

14 7.2 In response to ¶ 7.2 of the complaint NCO avers the cited statute
 15 speaks for itself and refers all matters of law to the court.

16 7.3 In response to ¶ 7.3 of the complaint NCO avers the cited statute
 17 speaks for itself and refers all matters of law to the court. Except as specifically
 18 admitted, NCO denies the remaining allegations contained in ¶ 7.3 of the
 19 Complaint.

20 7.4 NCO denies the allegations contained in ¶ 7.4 of the Complaint.

21 7.5 NCO denies the allegations contained in ¶ 7.5 of the Complaint.

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ANSWER OF NCO FINANCIAL SYSTEMS,
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LAW OFFICES OF
MILLS MEYERS SWARTLING
 1000 SECOND AVENUE, 30TH FLOOR
 SEATTLE, WASHINGTON 98104-1064
 TELEPHONE (206) 382-1000
 FACSIMILE (206) 386-7343

7.6 NCO denies the allegations contained in ¶ 7.6 of the Complaint.

7.7 NCO denies the allegations contained in ¶ 7.7 of the Complaint.

7.8 NCO denies the allegations contained in ¶ 7.8 of the Complaint.

7.9 NCO denies the allegations contained in ¶ 7.9 of the Complaint.

VIII. FOURTH CAUSE OF ACTION

Fair Debt Collection Practices Act Violation

(Unfair)

8.1 NCO incorporates its responses to ¶¶ 1 through 7.9 as though fully set forth herein.

8.2 In response to ¶ 8.2 of the complaint NCO avers the cited statute speaks for itself and refers all matters of law to the court

8.3 NCO denies the allegations contained in ¶ 8.3 of the Complaint.

8.4 NCO denies the allegations contained in ¶ 8.4 of the Complaint.

8.5 NCO denies the allegations contained in ¶ 8.5 of the Complaint.

IX FIFTH CAUSE OF ACTION

(Consumer Protection Act)

9.1 NCO incorporates its responses to ¶¶ 1 through 8.5 as though fully set forth herein

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LAW OFFICES OF
MILLS MEYERS SWARTLING
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SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7342

9.2 In response to ¶ 9.2 of the complaint NCO avers the cited statute speaks for itself and refers all matters of law to the court.

9.3 NCO lacks sufficient information to answer the allegations contained in ¶ 9.3, and based thereon denies the same.

9.4 In response to ¶ 9.4 of the complaint NCO avers the cited statute speaks for itself and refers all matters of law to the court.

9.5 In response to ¶ 9.5 of the complaint NCO avers the cited statute speaks for itself and refers all matters of law to the court

9.6 NCO denies the allegations contained in ¶ 9.6 of the Complaint.

9.7 NCO denies the allegations contained in ¶ 9.7 of the Complaint.

9.8 NCO denies the allegations contained in ¶ 9.8 of the Complaint.

9.9 NCO denies the allegations contained in ¶ 9.9 of the Complaint.

9.10 NCO denies the allegations contained in ¶ 9.10 of the complaint

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

As a first affirmative defense, NCO alleges plaintiff's Complaint should be dismissed because the various causes of action fail to state claims upon which relief can be granted.

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1 SECOND AFFIRMATIVE DEFENSE

2 As a second affirmative defense, NCO alleges, pursuant to 15 U.S.C.
3 § 1692k(c), to the extent that a violation(s) is established, any such violation(s)
4 was not intentional and resulted from a bona fide error notwithstanding
5 maintenance of procedures reasonably adapted to avoid any such error.

6 THIRD AFFIRMATIVE DEFENSE

7 As a third affirmative defense, NCO alleges Plaintiff knowingly and
8 voluntarily waived his rights to obtain any or all of the relief sought in the
9 complaint.

10 FOURTH AFFIRMATIVE DEFENSE

11 As a fourth affirmative defense, NCO alleges, Plaintiff consented to
12 and/or invited the conduct for which he seeks relief.

13 FIFTH AFFIRMATIVE DEFENSE

14 As a fifth affirmative defense, NCO alleges damages, if any, suffered by
15 Plaintiff were caused by third parties.

16 WHEREFORE, NCO respectfully requests that:

- 17 A. Plaintiff take nothing by way of his Complaint;
18 B. Judgment of dismissal be entered in favor of NCO;

19 ANSWER OF NCO FINANCIAL SYSTEMS,
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22 LAW OFFICES OF
23 **MILLS MEYERS SWARTLING**
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25 SEATTLE, WASHINGTON 98104-1064
26 TELEPHONE (206) 382-1000
 FACSIMILE (206) 386-7343

- 1 C. NCO be awarded costs and attorney's fees it has incurred in
2 defending this lawsuit.
3 D. NCO be granted such other and further relief as the Court deems
4 just and proper.
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6 Respectfully submitted this 14th day of October, 2008.

7 MILLS MEYERS SWARTLING
8 Attorneys for Defendant
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11 By: /s/Scott M. Ellerby
12 Scott M. Ellerby
13 WSBA No.: 16277
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ANSWER OF NCO FINANCIAL SYSTEMS,
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LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343

CERTIFICATE OF SERVICE

I hereby declare that on October 14, 2008, I electronically filed Answer of NCO Financial Systems, Inc. to Complaint with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

bobmitchelllaw@yahoo.com

MILLS MEYERS SWARTLING
Attorneys for Defendants

By: /s/Scott M. Ellerby
Scott M. Ellerby, WSBA No. 16277

**ANSWER OF NCO FINANCIAL SYSTEMS,
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LAW OFFICES OF
MILLS MEYERS SWARTLING
1000 SECOND AVENUE, 30TH FLOOR
SEATTLE, WASHINGTON 98104-1064
TELEPHONE (206) 382-1000
FACSIMILE (206) 386-7343